



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R06-OAR-2021-0517; FRL-8798-02-R6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Texas; Control of Emissions From Existing Other Solid Waste

Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving the CAA section 111(d)/129 state plan submitted by the State of Texas for sources subject to the Other Solid Waste Incineration Units (OSWI) Emission Guidelines (EG). The Texas OSWI plan was submitted to fulfill State obligations under CAA section 111(d)/129 to implement and enforce the requirements under the OSWI EG. The EPA is approving the state plan in part and amending the agency regulations in accordance with the requirements of the CAA.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. The incorporation by reference of certain material listed in the rule is approved by the Director of the *Federal Register* **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R06-OAR-2021-0517. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division - State Planning and Implementation Branch, 1201 Elm Street, Suite 500, Dallas, TX 75270, (214) 665-7346, ruan-lei.karolina@epa.gov.

Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our August 19, 2021, proposal (86 FR 46639) and accompanying Technical Support Document (TSD). In that action, we proposed to partially approve the Texas OSWI plan submitted by the Texas Commission on Environmental Quality (TCEQ) and amend 40 CFR part 62 in accordance with the requirements under sections 111(d) and 129 of the CAA. We proposed to find that the Texas OSWI plan, with the exception of 30 TAC section 113.2313(3), is at least as protective as the Federal requirements provided under the OSWI EG, codified at 40 CFR part 60, subpart FFFF. We received one comment from the TCEQ in support of EPA's proposed partial approval of the Texas CAA section 111(d) OSWI state plan. No adverse comment was received on the August 19, 2021, proposal.

II. Final Action

In this final action, the EPA is amending 40 CFR part 62, subpart SS, to reflect approval of the Texas OSWI Plan from TCEQ, received on May 18, 2009, with the exception of 30 TAC section 113.2313(3), in accordance with sections 111(d) and 129 of the CAA.

III. Environmental Justice Considerations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”¹ EPA is providing additional analysis of environmental justice associated with this action. We are doing so for the purpose of providing information to the public, not as a basis of our final action.

EPA conducted screening analyses using EJSCREEN, an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.² The EJSCREEN tool presents these indicators at a Census block group (CBG) level or a larger user-specified “buffer” area that covers multiple CBGs.³ An individual CBG is a

¹ See <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

² The EJSCREEN tool is available at <https://www.epa.gov/ejscreen>.

³ See <https://www.census.gov/programs-surveys/geography/about/glossary.html>.

cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to environmental justice and is subject to uncertainty in some underlying data (*e.g.*, some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).⁴ To help mitigate this uncertainty, we have summarized EJSCREEN data within larger “buffer” areas covering multiple block groups and representing the average resident within the buffer areas surrounding the incinerators. We present EJSCREEN environmental indicators to help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population. These indicators of overall pollution burden include estimates of ambient particulate matter (PM_{2.5}) and ozone concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.⁵ EJSCREEN also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and less than high school education. The EPA prepared EJSCREEN reports covering buffer areas of approximately 3-mile radii (or 6-mile radii for low-density populations/heavily industrialized areas) around the existing OSWI in Texas.⁶ Table 1 presents a summary of results from the EPA's screening-level analysis for the areas

⁴ In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.*, lower sampling error), particularly for small geographic areas and population groups. For more information, see https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.

⁵ For additional information on environmental indicators and proximity scores in EJSCREEN, see “EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,” Chapter 3 and Appendix C (September 2019) at https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.

⁶ The existing OSWI are located in Harris, Bowie, Dallas, El Paso, Jefferson, and Andrews Counties in Texas.

surrounding each OSWI compared to the U.S. as a whole (the detailed EJSCREEN reports are provided in the docket for this rulemaking).

Table 1— Existing Texas OSWI EJSCREEN Analysis Summary

Variables	Values for Buffer Areas (Radius) for each OSWI and the U.S. (percentile within U.S. where indicated)							
	Baylor College of Medicine (Harris, 3 miles)	Clean Harbors Deer Park LP (Harris, 6 miles)	Red River Army Depot (Bowie, 3 miles)	University of Texas Southwestern (Dallas, 3 miles)	U.S. Army Air Defense Artillery (El Paso, 3 miles)	Veolia ES Technical Solutions LLC (Jefferson, 6 miles)	Waste Control Specialists Inc. (Andrews, 6 miles)	U.S.
<i>Pollution Burden Indicators</i>								
Particulate matter (PM _{2.5}), annual average	10.5 µg/m ³ (89th %ile)	9.99 µg/m ³ (83rd %ile)	9.56 µg/m ³ (76th %ile)	9.85 µg/m ³ (81st %ile)	7.7 µg/m ³ (25th %ile)	9.95 µg/m ³ (83rd %ile)	7.4 µg/m ³ (19th %ile)	8.74 µg/m ³ (—)
Ozone, summer seasonal average of daily 8-hour max	34.6 ppb (10th %ile)	35.2 ppb (12th %ile)	41 ppb (38th %ile)	44.6 ppb (71st %ile)	54.1 ppb (90th %ile)	34.3 ppb (9th %ile)	54.8 ppb (91st %ile)	42.6 ppb (—)
Traffic proximity and volume score*	2200 (92nd %ile)	480 (67th %ile)	210 (49th %ile)	1800 (90th %ile)	1500 (88th %ile)	77 (29th %ile)	0.079 (0th %ile)	710 (—)
Lead paint (percentage pre-1960 housing)	0.25% (59th %ile)	0.19% (52nd %ile)	0.16% (48th %ile)	0.21% (54th %ile)	0.57% (81st %ile)	0.28% (61st %ile)	0.41% (72nd %ile)	0.28% (—)
Superfund proximity score*	0.27 (90th %ile)	0.19 (85th %ile)	0.18 (83rd %ile)	0.21 (86th %ile)	0.015 (12th %ile)	0.065 (51st %ile)	0.015 (11th %ile)	0.13 (—)
RMP proximity score*	1.2 (81st %ile)	6.7 (99th %ile)	0.5 (59th %ile)	1.7 (87th %ile)	1.4 (83rd %ile)	1.1 (77th %ile)	0.56 (62nd %ile)	0.75 (—)
Hazardous waste proximity score*	5 (88th %ile)	5.4 (89th %ile)	1.1 (58th %ile)	2.6 (76th %ile)	0.49 (43rd %ile)	0.31 (37th %ile)	0.1 (17th %ile)	2.2 (—)
<i>Demographic Indicators</i>								
People of color population	52% (67th %ile)	65% (75th %ile)	20% (36th %ile)	47% (63rd %ile)	85% (86th %ile)	39% (57th %ile)	53% (67th %ile)	40% (—)
Low-income population	26% (46th %ile)	36% (63rd %ile)	40% (68th %ile)	29% (51st %ile)	57% (87th %ile)	33% (59th %ile)	30% (53rd %ile)	31% (—)
Linguistically isolated population	4% (67th %ile)	9% (82nd %ile)	1% (50th %ile)	5% (70th %ile)	25% (95th %ile)	1% (52nd %ile)	4% (68th %ile)	5% (—)

Population with less than high school education	5% (29th %ile)	23% (84th %ile)	13% (64th %ile)	13% (65th %ile)	29% (90th %ile)	14% (68th %ile)	25% (86th %ile)	12% (—)
Population under 5 years of age	5% (46th %ile)	8% (70th %ile)	5% (43rd %ile)	4% (35th %ile)	7% (67th %ile)	9% (78th %ile)	5% (43rd %ile)	6%
Population over 64 years of age	11% (35th %ile)	11% (31st %ile)	19% (70th %ile)	11% (31st %ile)	15% (53rd %ile)	17% (63rd %ile)	13% (45th %ile)	16% (—)

* The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers.

This final rule approves Texas's OSWI Plan, received on May 18, 2009, with the exception of 30 TAC section 113.2313(3), in accordance with sections 111(d) and 129 of the CAA. The Texas OSWI Plan incorporates Federal requirements for OSWI, as specified in the OSWI EG at 40 CFR part 60, subpart FFFF. These requirements incorporated by Texas resulted in significant emissions reductions for OSWI, as described in the *Federal Registers* for the OSWI rules (69 FR 71472; 70 FR 74870). These requirements result in emission reductions for nine specified pollutants: particulate matter (PM), sulfur dioxide (SO₂), hydrogen chloride (HCl), nitrogen oxides (NO_x), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins/furans, and they additionally provide for opacity limits. Some of these pollutants have also been linked to serious health problems. Short- and/or long-term exposure to air pollution has been associated with a wide range of human health effects including increased respiratory symptoms, hospitalization for heart or lung diseases, and even premature death. Hazardous (or toxic) air pollutants may cause cancer or other serious health effects, such as reproductive effects or birth defects.^{7,8} Therefore, we believe that these requirements for existing OSWI and resulting emissions reductions have contributed to reduced environmental and health impacts on all populations impacted by emissions from these

⁷ See <https://www.epa.gov/air-quality-management-process/managing-air-quality-human-health-environmental-and-economic#what>.

⁸ See https://www.epa.gov/sites/default/files/2016-01/documents/oswi_factsheet11_30_05.pdf.

sources in Texas, including people of color and low-income populations. This final rule is not anticipated to have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns because it is not anticipated to result in or contribute to emissions increases in Texas. EPA approval of the Texas OSWI Plan makes the Plan and the corresponding OSWI EG requirements incorporated into the Plan federally enforceable by EPA as of the effective date of this final rulemaking.

IV. Incorporation By Reference

In accordance with the requirements of 1 CFR 51.5, we are finalizing regulatory text that includes the incorporation by reference of 30 TAC sections 113.2300 through 113.2357, excluding section 113.2313(3), adopted April 28, 2009, which is part of the CAA section 111(d)/129 Plan applicable to existing incinerators subject to the OSWI Emission Guidelines, at 40 CFR part 60, subpart FFFF, within TCEQ's jurisdiction in the State of Texas. The regulatory provisions of 30 TAC sections 113.2300-113.2313(2) and sections 113.2314-113.2357 incorporate the OSWI Emissions Guidelines promulgated by the EPA at 40 CFR part 60, subpart FFFF, and establish emission standards and compliance times for the control of other solid waste incinerators certain air curtain incinerators, as defined in subpart FFFF that commenced construction, modification, or reconstruction on or before December 9, 2004. The EPA has made and will continue to make 30 TAC sections 113.2300-113.2313(2) and sections 113.2314-113.2357 generally available electronically through www.regulations.gov, Docket No. EPA-R06-OAR-2021-0517 and in hard copy at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). This incorporation by reference has been approved by the Office of the *Federal Register* and the Plan is federally enforceable under the CAA as of the effective date of this final rulemaking.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and FFFF; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d)/129 state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the CAA section 111(d) Plans are not approved to apply in Indian country, as defined at 18 U.S.C. 1151, located in the state. As such, this rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), and it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the ***Federal Register***. A major rule cannot take effect until 60 days after it is published in the ***Federal Register***. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE ***FEDERAL REGISTER***]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not

postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: April 25, 2022.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

**PART 62 – APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. Amend § 62.10850 by adding paragraphs (b)(5) and (c)(5) to read as follows:

§ 62.10850 Identification of Plan.

* * * * *

(b) * * *

(5) Control of air emissions from incinerators subject to the Other Solid Waste Incineration units Emission Guidelines, as adopted by the Texas Commission on Environmental Quality (TCEQ) and submitted by the Governor in a letter dated May 18, 2009.

(c) * * *

(5) Other solid waste incinerators and certain air curtain incinerators as defined in the Other Solid Waste Incineration units Emission Guidelines at 40 CFR part 60, subpart FFFF.

3. Add an undesignated center heading and § 62.10900 to read as follows:

Emissions From Existing Other Solid Waste Incineration Units

§ 62.10900 Identification of plan.

(a) *Identification of sources.* The plan submitted by the Texas Commission on Environmental Quality (TCEQ) on May 18, 2009, applies to existing incinerators subject to the Other Solid Waste Incineration units (OSWI) Emission Guidelines, at 40 CFR part 60, subpart FFFF, within TCEQ's jurisdiction in the State of Texas.

(b) *Effective date.* The effective date of the plan is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

(c) *Incorporation by reference.* (1) The material incorporated by reference in this section was approved by the Director of the *Federal Register* Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material may be inspected or obtained from the EPA Region 6 office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, 214-665-2200.

Copies may be inspected at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email

fr.inspection@nara.gov or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(2) State of Texas, Office of the Secretary of State, Texas Register, P.O. Box 12887, Austin, Texas 78711, (512) 463-5561, register@sos.texas.gov, <https://www.sos.texas.gov/tac/index.shtml>.

(i) 30 TAC sections 113.2300-113.2313(2) and sections 113.2314- through 113.2357, excluding section 113.2313(3). Texas Administrative Code Title 30, Chapter 113:

Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Subchapter D: Designated Facilities and Pollutants, Division 5: Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004, adopted April 28, 2009.

(ii) [Reserved]

[FR Doc. 2022-09195 Filed: 5/4/2022 8:45 am; Publication Date: 5/5/2022]